

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Chaun'te Tevelle Eppes, # 247788,

Plaintiff,

v.

**Jon Ozmint; Leroy Carthlage; Scott Lewis,
Captain NFN Brazil; Scott Deckeron,
Lieutenant NFN Crouch;
Sergeant NFN McCurry;
and Officer NFN Brown,**

Defendants.

C.A. No. 9:05-203-CMC-GCK

ORDER

This civil rights action was filed by a state inmate proceeding *pro se*. Plaintiff has been unsuccessful in serving two of the Defendants, Captain NFN Brazil and Officer NFN Brown, as required under the Federal Rules of Civil Procedure even though several attempts were made by the U. S. Marshals Service. The matter is now before the court for a ruling as to whether the two Defendants should be dismissed from the case.

In accordance with the court's order of reference, 28 U.S.C. § 636(b), and Local Rule 73.02 (B)(2)(b) and (e), DSC, this matter was referred to United States Magistrate Judge George C. Kosko for pre-trial proceedings and a Report and Recommendation. On April 25, 2005, the Magistrate Judge issued a Report recommending that both Defendants be dismissed from the case without prejudice and that the case proceed against the remaining Defendants who have been served. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Plaintiff has filed no objections and the time for doing so has expired.

The Magistrate Judge makes only a recommendation to this court. The recommendation has

no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this order.

IT IS THEREFORE ORDERED that both Defendants Captain Brazil and Officer Brown are *dismissed from this case without prejudice*, and it is

FURTHER ORDERED that the case proceed against the remaining Defendants.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
May 26, 2005